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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1971

No. 71-675

CHRISTOPHER KAPPOS,
Appellant,

v.

STATE OF IOWA,
Appellee.

On Appeal from the Supreme Court of Iowa

JURISDICTIONAL STATEMENT

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JURISDICTIONAL STATEMENT

Appellant appeals from the judgment of the Supreme Court of Iowa entered September 9, 1971, affirming the judgment of the trial court as it regards the method of selecting the jury panel for municipal courts within the State and submits this statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that a substantial question is present.

OPINION BELOW

The opinion of the Supreme Court of Iowa is reported at 189 NW2d 563 and is set forth in the Appendix (App. A, p. A-1).

JURISDICTION

This case was tried in the Municipal Court of the City of Ames, Story County, Iowa, wherein the Appellant was charged and convicted of the indictable misdemeanor crime of knowingly permitting minors to purchase beer upon his business premises and was appealed to the Supreme Court of Iowa upon the grounds that Section 602.34, Code of Iowa, which governs the eligibility of persons to serve upon the jury panel, was unconstitutional as a violation of the 14th Amendment to the United States Constitution. The Supreme Court of Iowa, by a 6-2 decision, found Section 602.34, Code of Iowa, compatible with the 14th Amendment to the Constitution of the United States. The judgment of the Supreme Court of Iowa was entered on September 9, 1971 (App. A, p. A-1) and notice of appeal to the Supreme Court of the United States was filed in the Supreme Court of Iowa on October 8, 1971 (App. C, p. A-21).

The jurisdiction of the Supreme Court of the United States to review this judgment by direct appeal is conferred by 28 USC § 1257(2). The following cases sustain the jurisdiction of the Supreme Court of the United States to review this case upon direct appeal. **Winters v. People of State of New York** (1948), 333 US 507, 92 L.ed. 840, 68 S.Ct. 665; **Miller v. Schoene, Virginia** (1928), 276 US 272, 72 L.ed. 568, 48 S.Ct. 249.

QUESTIONS PRESENTED

A. Where a Municipal Court of a state has jurisdiction co-extensive with the territorial limits of the County in which the court is situated, is it violative of the 14th Amendment to the United States Constitution to limit by statute (Section 602.34, Code of Iowa) the selection of the jury panel to residents within the corporate limits of the

city thereby excluding all residents of the county residing beyond the limits of the municipality.

B. Where a Municipal Court of a state has jurisdiction co-extensive with the territorial limits of the County in which the court is situated, does the jury panel which is selected under authority of statute (Section 602.34, Code of Iowa) represent a cross-section of the community served by the court which arbitrarily excludes from its jury selection as a class all rural residents of the county residing beyond the limits of the municipality.

CONSTITUTIONAL AND STATUTE PROVISIONS

That the statutory provisions of the State of Iowa and the constitutional amendment directly involved in this appeal are as follows:

Section 602.34, Code of Iowa, reads:

> "The commission, in the presence and under the supervision of the judge of said court, if only one, and if more than one, a judge of said court designated by the judges thereof, shall, on the establishment of the court, prepare from the pollbooks or election register of the last preceding general election in the territory included in the municipal court district, a list equal in number of one-tenth of all electors thereon qualified for jury service, which shall be known as the 'jury list'; and shall, before the last Monday in December following the general municipal election thereafter, **prepare such a list from the pollbooks or election register of the preceding general municipal election**" (Emphasis supplied).

Section 1 of the 14th Amendment to the Constitution of the United States reads:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are

citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Other related Iowa statute laws applicable to this case are Sections 602.14, 602.15, 602.16 and 753.2, Code of Iowa, and said statutes are set forth in full in Appendix B, p. A-19.

STATEMENT

On January 23, 1970, the Appellant did reside as well as own and operate a business known as Chris's Tavern within the Town of Cambridge located in Story County, Iowa (R.p. 42, ll. 26-29).

On or about January 23, 1970, four persons under the age of twenty-one years entered Appellant's place of business and consumed beer upon the premises (R.p. 37, ll. 2-7; R.p. 37, ll. 26-34; R.p. 39, ll. 6-13; R.p. 36, ll. 30-33; R.p. 38, ll. 15-17; R.p. 39, ll. 25-28).

Police officers discovered the minors and their activity and shortly thereafter the Appellant was charged in the Municipal Court in the City of Ames, Story County, Iowa, by information of the Story County Attorney with the indictable misdemeanor crime of knowingly permitting minors to consume beer upon the business premises of the Appellant in Cambridge, Iowa (R.p. 3, ll. 12-31).

The Municipal Court of the City of Ames, Story County, Iowa, which is located within the corporate limits of the City of Ames, does, by statute have jurisdiction co-extensive with the County in all criminal misdemeanor cases which includes the charge against this Appellant (Section 602.34, Code of Iowa) (App. B, p. A-19).

The trial court fixed March 11, 1970, for the Appellant to commence trial before a jury panel consisting entirely of residents from within the corporate limits of the City of Ames, Iowa.

On March 10, 1970, the Appellant, prior to jury selection and trial, filed written objection to the jury panel (R.pp. 4-13), claiming that the selection of the members of the jury panel exclusively from within the corporate limits of the City of Ames, Iowa, violated the 14th Amendment to the Constitution of the United States.

On March 11, 1970, prior to the commencement of jury selection, the trial court orally overruled the said motion of the Appellant (R.pp. 18-22).

Trial commenced March 11, 1970, before a jury selected entirely from residents of the City of Ames. On March 12, 1970, the jury returned a verdict of guilty (R.p. 64, ll. 3-8) and judgment was entered by the Municipal Court of the City of Ames, Story County, Iowa, upon the verdict on March 20, 1970 (R.p. 64, ll. 10-15).

On March 20, 1970, the Appellant appealed the judgment of the Municipal Court of the City of Ames, Iowa, to the Supreme Court of Iowa (R.pp. 68-71).

The constitutional question regarding Appellant's objection to the jury panel were raised by Brief Points A and B of Error I of Division I of Appellant's errors relied upon for reversal contained in Appellant's Brief and Argument at pages 9 through 35 thereof.

On September 9, 1971, the Supreme Court of Iowa affirmed the judgment of the trial court in a 6-2 decision. The minority members of the Iowa Supreme Court joined in a dissenting opinion stating that the judgment should be reversed upon the grounds that the selection of the jury under Section 602.34, Code of Iowa, was violative of the

due process clause of the 14th Amendment of the United States Constitution (App. A, p. A-1).

On October 8, 1971, the Appellant appealed the judgment of the Supreme Court of Iowa to the Supreme Court of the United States and filed the notice thereof with the Clerk of the Iowa Supreme Court (App. A, p. A-1).

THE QUESTIONS ARE SUBSTANTIAL

This case raises the substantial question as to the power of a state through its legislature to limit the area from which jurors may be selected for a municipal court to the municipality in which the court is situated when the court has county-wide jurisdiction thereby eliminating all rural and farm residents from the jury selection process.

In the present case the Appellant was a resident of the Town of Cambridge (population, 661, Census of Population of the United States Department of Commerce/Bureau of Census, December, 1970), and did operate a tavern business within the same Town. On February 9, 1969, the Appellant was charged with the indictable misdemeanor crime of knowingly permitting minors to purchase beer upon his business premises. Prior to trial the Appellant objected to the method of selecting jurors in the Municipal Court of the City of Ames, Story County, Iowa (R. p. 11). The trial court overruled Appellant's objection to the jury panel and the Appellant appealed the ruling of the trial court to the Iowa Supreme Court raising the same question in its Brief and Argument by Brief Points A and B of Error I of Division I. The Supreme Court of Iowa sustained the decision of the lower court by a 6-2 decision.

In Iowa there have been established twelve municipal courts in as many cities serving eleven counties. The Municipal Court derives its jurisdictional power in the

trial of misdemeanor criminal cases from Section 602.15, Code of Iowa, which reads in part:

> "In all criminal matters the (municipal) court shall exercise the jurisdiction conferred on the district court for the prosecution of misdemeanors . . ."

Also see 602.14 and 602.15, Code of Iowa (App. B, p. A-19).

The district courts of the State of Iowa derive their jurisdiction through Section 753.2, Code of Iowa, which reads:

> "The local jurisdiction of the district court is of offenses committed within the county in which it is held, and of such other cases as are or may be provided by law."

The jury panel from which the Municipal Court jurors are selected is limited to residents of the municipality in which the court is located and to the names as listed upon the pollbooks or election register of the preceding general municipal election. This procedure is set forth in Section 602.34, Code of Iowa, which reads:

> "The commission, in the presence and under the supervision of the judge of said court, if only one, and if more than one, a judge of said court designated by the judges thereof, shall, on the establishment of the court, prepare from the poll books or election register of the last preceding general election in the territory included in the municipal court district, a list equal in number to one-tenth of all electors thereon qualified for jury service which shall be known as the 'jury list'; and shall, before the last Monday in December following the general municipal election thereafter, **prepare such a list from the poll books or election register of the preceding general municipal election**" (Emphasis supplied).

The State of Iowa under Section 602.34, Code of Iowa, has substantially limited the area and population of the county from which jurors may be selected, and such practice and procedure has virtually eliminated all rural and farm population of the county from the jury selection process. The following figures obtained from the Census of Population of the United States Department of Commerce Bureau of Census (December, 1970) show the population of each city within the State of Iowa where a municipal court is located, the population of the county which is served by the court, and the percentage of residents of the county which are excluded from jury service under the prevailing statutory procedure.

Cities Where Municipal Courts Are Located	City Pop.	Counties Served By the Court	County Pop.	% of County Residents Excluded From Jury Service
Ames	39,505	Story	62,783	37%
Cedar Falls	29,597	Blackhawk	132,916	78%
Cedar Rapids	110,642	Linn	163,213	32%
Clinton	34,719	Clinton	56,744	39%
Council Bluffs	60,348	Pottawattamie	86,991	31%
Davenport	98,469	Scott	142,687	31%
Des Moines	200,587	Polk	286,100	30%
Dubuque	62,309	Dubuque	90,609	31%
Marshalltown	26,219	Marshall	41,076	36%
Ottumwa	29,610	Wapello	42,149	30%
Sioux City	85,925	Woodbury	103,052	17%
Waterloo	75,533	Blackhawk	132,916	43%

The injustice and basic principles involved in this case is much akin to the case of **Strauder v. West Virginia** (1880), 100 US 303, 25 L.ed. 664. In this case the State of West Virginia retained a statute upon its books excluding all Negroes from jury service after the passage of the 14th Amendment to the United States Constitution. The court in ruling the statute in violation of the 14th Amendment states:

> "The very idea of a jury is a body of men composed of the peers or equals of the person whose rights it is

selected or summoned to determine; that is, of his neighbors, fellows, associates, persons having the same legal status in society as that which he holds . . .

"If this is the spirit and meaning of the Amendment, whether it means more or not, it is to be construed liberally, to carry out the purposes of its framers. It ordains that no State shall make or enforce any laws which shall abridge the privileges or immunities of citizens of the United States (evidently referring to the newly made citizens, who, being citizens of the United States, are declared to be also citizens of the State in which they reside). It ordains that no State shall deprive any person of life, liberty or property, without due process of law, or deny to any person within its jurisdiction the equal protection of the laws. What is this but declaring that the law in the States shall be the same for the black as for the white; that all persons, whether colored or white, shall stand equal before the laws of the States and, in regard to the colored race, for whose protection the Amendment was primarily designated, that no discrimination shall be made against them by law because of their color? The words of the Amendment, it is true, are prohibitory, but they contain a necessary implication of a positive immunity, or right, most valuable to the colored race—the right to exemption from unfriendly legislation against them distinctively as colored; exemption from legal discriminations, implying inferiority in civil society, lessening the security of their enjoyment of the rights which others enjoy, and discriminations which are steps towards reducing them to the condition of a subject race.

"That the West Virginia Statute respecting juries —the statute that controlled the selection of the grand and petit jury in the case of the plaintiff in error—is

such a discrimination ought not to be doubted. Nor would it be if the persons excluded by it were white men. If in those States where the colored people constitute a majority of the entire population a law should be enacted excluding all white men from jury service, thus denying to them the privilege of participating equally with the blacks in the administration of justice, we apprehend no one would be heard to claim that it would not be a denial to white men of the equal protection of the laws. Nor if a law should be passed excluding all naturalized Celtic Irishmen, would there be any doubt of its inconsistency with the spirit of the Amendment. The very fact that colored people are singled out and expressly denied by a statute all right to participate in the administration of the law, as jurors, because of their color, though they are citizens and may be in other respects fully qualified, is practically a brand upon them, affixed by the law, an assertion of their inferiority, and a stimulant to that race prejudice which is an impediment to securing to individuals of the race that equal justice which the law aims to secure to all others."

The principle set forth in the above case has been reaffirmed time and time again throughout the years. **Bush v. Kentucky** (1882), 107 US 110, 21 Led. 354; **Norris v. Alabama** (1935), 294 US 587, 79 Led. 1074, 55 S.Ct. 579; **Patton v. Mississippi** (1947), 332 US 463, 92 Led. 76, 68 S.Ct. 184; **Cassell v. Texas** (1950), 339 US 382, 94 Led. 839, 70 S.Ct. 629; **Hernandez v. Texas** (1954), 347 US 475, 98 Led. 866, 74 S.Ct. 677; **Eubanks v. Louisiana** (1958), 356 US 584, 2 Led.2d 991, 78 S.Ct. 570; **Whitus v. Georgia** (1967), 385 US 545, 17 Led.2d 599, 87 S.Ct. 643.

It is clear that this court under the 14th Amendment has prohibited any discrimination in the selection of ju-

rors by a state whether it be through its legislature, courts, administrative or executive officers. **Norris v. Alabama** (supra); **Patton v. Mississippi** (supra).

Although most jury discrimination cases reaching this court involved persons of the Negro race, the court has expanded the principles set forth in those cases to any unreasonable and arbitrary discrimination. See **Hoyt v. Florida** (1961), 368 US 57, 1 L.ed.2d 118, 82 S.Ct. 159, in which case a woman defendant claimed that women were arbitrarily excluded from the jury panel. While the Supreme Court disagreed with the view of the Appellant, it stated:

> "We, of course, recognize that the Fourteenth Amendment reaches not only arbitrary class exclusions from jury service, based on race or color, **but also all other exclusions which 'single out' class of persons** for different treatment not based on some reasonable classification." (Emphasis supplied.)

In **Hernandez v. Texas** (1954), 347 US 475, 478, 98 L.ed. 866, 74 S.Ct. 677, the court stated:

> "Although the Court has had little occasion to rule on the question directly, it has been recognized since **Strauder v. West Virginia**, 100 US 303, 25 L.ed. 644, **that the exclusion of a class of persons from jury service on grounds other than race or color, may also deprive a defendant who is a member of that class of the constitutional guarantee of equal protection of the laws.**" (Emphasis supplied.)

and at Page 478:

> **"When the existence of a distinct class is demonstrated, and it is further shown that the laws, as written or as applied, single out that class for different treatment not based on some reasonable classifi-**

cations, the guarantees of the Constitution have been violated.'' (Emphasis supplied.)

In the present case by virtue of statute all persons residing outside the city where the court is located are excluded from jury service, although they are within the jurisdiction of the court. This exclusion applies to all rural and farm population of the county. It has long been a principle, as applied under the 14th Amendment, that the jury must be drawn from a cross-section of the community where the court has jurisdiction. This principle regarding jury selection is set forth in **Thiel v. Southern P. Company** (1945), 328 US 217, 90 L.ed. 1181, 66 S.Ct. 984, which case, although involving civil proceedings, made the following observation:

> ''The American tradition of trial by jury, considered in connection with either criminal or civil proceedings, necessarily contemplates an impartial jury drawn from a cross-section of the community. **Smith v. Texas**, 311 US 128, 130, 85 L.ed. 84, 86, 61 S.Ct. 164; **Glasser v. United States**, 315 US 60, 85, 86 L.ed. 680, 707, 62 S.Ct. 457. This does not mean, of course, that every jury must contain representatives of all the economic, social, religious, racial, political and geographical groups of the community; frequently such complete representation would be impossible. But it does mean that prospective jurors shall be selected by court officials without systematic and intentional exclusion of any of these groups. Recognition must be given to the fact that those eligible for jury service are to be found in every stratum of society. Jury competence is an individual rather than a group or class matter. That fact lies at the very heart of the jury system. To disregard it is to open the door to class distinctions and discrimination which are abhorrent to the democratic ideals of trial by jury.''

This principle was reaffirmed by the United States Supreme Court in **Carter v. Greene County** (1970), 396 U.S. 320, 24 L.ed.2d 549, 90 S.Ct. 518:

> "The States remain free to confine the selection to citizens, to persons meeting specified qualifications of age and educational attainment, and to those possessing good intelligence, sound judgment, and fair character. Our duty to protect the federal constitutional rights of all does not mean we must or should impose on states our conception of the proper source of jury lists, so long as the source reasonably reflects a cross-section of the population suitable in character and intelligence for that civic duty."

CONCLUSION

In the present case the State of Iowa, through its legislature, established a court (municipal court) that has county-wide jurisdiction in selected matters which includes misdemeanor criminal cases but has limited the jury selection to the residents of the city in which the court is located. As the 1970 population figures show, such exclusionary process eliminates 17% to 78% of the population within the jurisdiction of the municipal courts, and more specifically such process effectively eliminates all the rural and farm population. The arbitrary elimination of rural residents is not based upon any reasonable or rational premise but is arbitrary and without foundation. The exclusion not only eliminates the rural and farm population from the selection process but has the potential of excluding areas within the county having groups of people of a differing religious, political or racial background, not included within the city from which the jury panel is selected.

It is not unreasonable to argue that the philosophy and thinking of the various groups and classes making up the

rural county may differ from those persons residing in the city where the court is located. It is essential that a person having been charged with a crime be judged by a jury selected from persons representing a cross-section of the community regardless of class distinction.

The jury selection process under Section 602.34, Code of Iowa, virtually eliminates as a class all rural and farm residents as well as potentially eliminating persons of a distinctive class residing in pockets within the county and such exclusion precludes the jury panel from being representative of a cross-section of the community, in violation of the 14th Amendment to the United States Constitution.

Respectfully submitted

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